IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

Crl.MC.No. 3234 of 2006()

CC.551/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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PETITIONER: ACCUSED:

SAHADEVAN,
MOHANA SADANAM, KAKKODU P.O., VALACODU VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANT & STATE:

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1. NAZARUDEEN,
VALUTHUNDIL VEEDU, KUNNICODE P.O.,VILAKUDY VILLAGE
PATHANAPURAM TALUK, KOLLAM DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.RAJEEV
SRI.K.SURESH BABU (PUNALUR)
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3234 of 2006

Dated this the 12th day of February 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The trial has already commenced. When the complainant was in the witness stand he was confronted with a document marked as Ext.D1 (a copy of which is produced as Annexure-1). The complainant denied the said document. Thereupon, the petitioner filed an application to forward the said disputed document Ext.D1 to the expert for comparison. He filed another application that the specimen/standard handwriting of the complainant may be taken by the learned Magistrate - evidently in exercise of the powers under Section 73 of the Evidence Act. Both those petitions were dismissed by the learned Magistrate holding that Ext.D1 is not such a crucial document for the proof of which further time need be taken up. That petition for forwarding the same to the expert having been dismissed, the learned Magistrate further felt that it is not necessary to obtain standard signature/handwriting of the accused. Those orders are produced as Annexures II and IV.

2. The petitioner has a further case that the complainant was not available in India at the relevant time. He therefore filed an application to direct the complainant to produce his passport. The learned Magistrate rejected the said application also. That order is produced as Annexure-III. Annexures II to IV are challenged before me in this petition filed under Section 482 Cr.P.C. Notice was given. The respondent/complainant has entered appearance through counsel. He has filed an affidavit before this court. The learned counsel for the petitioner submits that the affidavit makes the position clear that Annexure-I document marked as Ext.D1 before the learned Magistrate is written and signed by him. He accepts Ext.D1. He submits that if he were given an opportunity to mount the witness box again, he will clarify that only on account of an error he happened to deny Ext.D1. At any rate, it is not necessary in these circumstances to take the specimen handwriting or forward Ext.D1 to the expert. Controversy regarding Ext.D1 and the need to take specimen signatures and forward Ext.D1 to the expert must be held to be over with that affidavit filed by the respondent/complainant.

3. The learned counsel for the respondent submits that he has now got back the passport and he is willing to produce the same before the learned Magistrate. To avoid any further loss of time, I am satisfied that the challenge raised in this petition can be turned down accepting the submission of the respondent/complainant that he does not dispute Ext.D1 and accepting his offer to now produce the passport before the learned Magistrate.

4. I am satisfied that this Criminal Miscellaneous Case can now be allowed with observations in the light of the specific stand taken by the respondent/complainant.

5. In the result, this Criminal Miscellaneous Case is allowed and it is directed that the learned Magistrate shall examine the complainant under Section 311 Cr.P.C for the limited purpose of confronting him with Ext.D1 and admission of the signature and contents of the same. He shall also be permitted to produce his passport before the learned Magistrate on the next date of posting.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006